

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2420 OF 2007

IN

CHAMBER SUMMONS NO.714 OF 2007

IN

CHAMBER SUMMONS NO.1499 OF 2002

IN

CHAMBER SUMMONS NO.1188 OF 2005

IN

CHAMBER SUMMONS NO.16 OF 2006

IN

EXECUTION APPLICATION NO.154 OF 1999

IN

SUIT NO.2562 OF 1998

M/s.Swift Finlease (India) Ltd. .. Plaintiffs.

Versus

M/s.Panchal Sleek Plast Pvt. Ltd. .. Defendants.

Versus

Union Bank of India .. Applicant.

Mr.Shailesh Shah i/b. Mr.Yagnik for plaintiffs.

Mr.A.B.Ketkar with Mr.D.G.Dhanure i/b. M/s.M.V.Kini & Co.
for applicant.

Mr.S.M.Kazi, Deputy Sheriff present.

Mr.V.B.Tiwari for Intervenor/applicant.

Mr.R.S.Apte for auction purchaser.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 2nd AUGUST, 2007.

P.C.:

1. This Notice of Motion is by the applicant and it seeks the following reliefs :-

a) That the delay, if any, taking out the present Notice of Motion may please be condoned.

b) That this Hon'ble Court be pleased to recall the Order dated 2nd May, 2003 in Chamber Summons No.1499 of 2002 and the said Chamber Summons may please be restored into file and be heard on merit.

c) Pending the hearing and final disposal of the Notice of Motion, further execution of the execution of the ex-parte decree dated 19th January, 1994 in Execution Application No.154 of 1999 in Suit No.1562 of 1998 against the property

being Plot No.C in Survey No.267, Hissa No.1/1 (part), CTS No.610 (part) admeasuring 464 sq.mtrs. equivalent to 555 sq.yds. or thereabout at Village Malad (East), Veera Dairy Compound, Indira Nagar, Mumbai - 400 097 may please be stayed.

2. This Notice of Motion being served upon the parties thereto including the auction purchasers, matter was adjourned as the decree holder and the applicant Bank were negotiating the matter with regard to adjustment and appropriation of the sale proceeds. Today Mr.Shah, appearing for the decree holder and the learned counsel, appearing for the applicant Bank, tendered Consent Terms, which are signed by the Advocates as well as parties.

3. The property viz. structure, more particularly described in the prayer clause of the Notice of Motion, reproduced above was put up for sale in execution of a decree passed in the above suit.

4. In the meanwhile, the judgement debtor had also dues pending insofar as the applicant Bank is concerned. There were recovery proceedings initiated based upon the claim of the Bank of securities in the form of mortgage. Recovery certificate is also granted in its favour. By

this Notice of Motion and the earlier proceedings, the Bank objected to the sale being concluded and finalized. It was seeking to appropriate the entire sum towards its dues, which course was objected by the decree holder.

5. Now, inter se disputes between decree holder and the applicant Bank are resolved and the Bank has agreed to accept the sums specified in the Consent Terms, leaving open its remedies to recover the balance in accordance with law.

6. Mr.Apte, appears for the auction purchaser and states that the auction purchaser has pursuant to the sale, its bid being accepted, deposited a sum of Rs.84.00 lakhs. He prays that the sale be confirmed in favour of the auction purchaser on the basis of the statements contained in the affidavit dated 30th July, 2007, copies of which are already given to the decree holder and the applicant Bank.

7. When the Consent Terms were to be considered, the judgement debtor sought to appear through his Advocate. The Advocate, then, orally requested that the sale be not confirmed nor the Consent Terms be taken on record or any order passed in terms thereof. Request was to grant time

to the Judgement Debtor to pay the Bank as well as the decree holder. Six weeks time was sought from the Court to make an offer and deposit some amounts. On a query by the Court whether the judgement debtor would deposit Rs.25.00 lakhs in the Court within a period of one week, the judgement debtor's Advocate pleaded inability and sought further time. All this was done orally. The judgement debtor is aware of the proceedings, namely, the decree and the auction notice and does not dispute its liability either. It has not made any application in writing, elaborating its pleas nor does it challenge the sale on the ground that it is vitiated by any fraud or any irregularity. It is pertinent to note that defendant - Judgement Debtor is a Private Limited Company.

8. To my mind, when the judgement debtor has appeared at a belated stage and orally sought to intervene without showing its bonafides, it would not be fair, just and proper to entertain the request. More so, when the Bank's dues are involved and they are sought to be adjusted. The monies due to the Bank would atleast be received in part. The Applicant has also been waiting for a considerable length of time along with the decree holder.

9. In such circumstances, the oral application made

before me is rejected. The auction purchaser having deposited the entire sum and the sale appearing to be otherwise just, fair and proper, to my mind, the order in terms of the Consent Terms can safely be passed.

10. Consent Terms signed by parties i.e. by Applicant and the Decree holder in the suit are taken on record and marked "X" for identification. Order in terms of Consent Terms.

11. Notice of Motion and the Execution Application stands disposed of accordingly.

(S.C.Dharmadhikari, J.)